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Bruce A. Henoch  
General Attorney

6560 Rock Spring Drive  
Bethesda, MD 20817  
Telephone 301 214 3347  
Fax 301 214 7145  
Telex 197800  
Internet bruce.henoch@comsat.com

October 16, 1998

Ms. Magalie Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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OCT 16 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: In the Matter of Forbearance from Applying Provisions of the Communications  
Act to Wireless Telecommunications Carriers  
WT Docket No. 98-100

Dear Ms. Salas:

COMSAT Corporation, by its attorneys, files herewith an original and eleven copies of the  
Opposition of COMSAT Corporation to Petition for Reconsideration in the above-referenced  
proceeding.

An additional copy is enclosed; please date-stamp this copy and return it to the courier.  
Please refer any questions to the undersigned.

Yours truly,

Bruce A. Henoch  
General Attorney

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Forbearance from Applying Provisions	)	WT Docket No. 98-100
of the Communications Act to Wireless	)	
Telecommunications Carriers	)	

**OPPOSITION OF COMSAT CORPORATION TO  
PETITION FOR RECONSIDERATION**

COMSAT Corporation, through its COMSAT Mobile Communications business unit ("COMSAT"), hereby files its Opposition to the Petition for Reconsideration filed by Stratos Mobile Networks (USA), LLC ("Stratos") in the above-captioned proceeding.<sup>1</sup>

**Introduction and Summary**

Stratos seeks partial reconsideration of the recent Memorandum Opinion and Order in which the Commission decided, among other things, to allow permissive detariffing for the provision of international Commercial Mobile Radio Services (CMRS).<sup>2</sup> Stratos seeks reconsideration of this portion of the Order insofar as it applies to the international Mobile Satellite Service (MSS) offerings of COMSAT. However, the Commission determined explicitly

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<sup>1</sup> *In the Matter of Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100, Petition for Reconsideration of Stratos Mobile Networks (USA) LLC, filed Sep. 10, 1998 ("Petition").

<sup>2</sup> *In the Matter of Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 98-100, FCC 98-134 (released July 2, 1998) ("Order").

that the public interest requires that detariffing must apply to all CMRS operators without exception or to none at all. Stratos in its petition is thus really seeking reconsideration of the issue of whether COMSAT's MSS services should be regulated as CMRS at all, and the time to seek modification to this well-settled ruling has long passed. Further, Stratos provides no evidence whatsoever that permissive detariffing of COMSAT's international CMRS offerings will have any anticompetitive effects on the marketplace. Stratos instead relies on bare conclusory statements of anticompetitive harm that are simply belied by reality. For these reasons, Stratos' petition for reconsideration should be denied.

### **Discussion**

In its recent Order, the Commission discussed the Personal Communications Industry Association's (PCIA) request that it forbear from requiring broadband PCS carriers to file tariffs for international services.<sup>3</sup> The Commission decided that it was indeed appropriate to forbear from such tariffing requirements, but decided that such forbearance must apply to "all CMRS providers, regardless of whether they are broadband PCS licensees."<sup>4</sup> The Commission repeated its long-held policy that it must "regulate all CMRS providers similarly,"<sup>5</sup> because the public interest would be disserved "by granting forbearance that would create a disparity in regulatory

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<sup>3</sup> Order at ¶¶ 55-65.

<sup>4</sup> Order at ¶ 62.

<sup>5</sup> Order at ¶ 62.

treatment among like CMRS services.”<sup>6</sup>

While Stratos would have the Commission believe that it is asking for reconsideration of the instant Order, the real issue raised in Stratos’ petition is whether MSS services such as those provided by COMSAT should be considered CMRS services in the first place. This issue was considered and decided by the Commission some time ago, and the time for challenging this decision has long passed.<sup>7</sup> The Commission ruled in 1994 that it was the intent of Congress to include “all existing mobile services” within the definition of CMRS, including “mobile satellite services.”<sup>8</sup> The Commission stated that, while satellite services provided using a transportable platform that cannot move when the service is being provided should not be included, it specifically stated that terminals “*such as Inmarsat-M terminals* which are capable of transmitting while the platform is moving” are included within the CMRS definition.<sup>9</sup> Because the Commission has already decided that COMSAT’s “international MSS” services shall be treated and regulated as CMRS providers, the issues raised in Stratos’ petition are stale, and the petition should be denied.

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<sup>6</sup> Order at ¶ 63. The Commission specifically stated that, “[i]f we could not extend forbearance to *all* CMRS providers, we would *not* be able to grant the forbearance that PCIA seeks.” *Id.* (emphasis added).

<sup>7</sup> See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1425 (1994) (“CMRS Order”).

<sup>8</sup> 9 FCC Rcd at 1424.

<sup>9</sup> 9 FCC Rcd at 1425 (emphasis added). Pursuant to the Commission’s definition in the CMRS Order, it is clear that -- at a minimum -- COMSAT’s provision of Inmarsat-M, mini-M, and Standard-C services fits within the definition of CMRS, as these are all services that are capable of being provided while the terminal platform is moving.

Furthermore, even if these issues were reviewable by the Commission now, Stratos provides no evidence whatsoever for its claim that “[p]ermissive detariffing is not appropriate for the Inmarsat services that COMSAT provides as a dominant carrier.”<sup>10</sup> Stratos -- as usual -- relies on conclusory statements with no basis in fact to support its arguments. For example, while Stratos states that COMSAT is the exclusive U.S. Signatory to Inmarsat and is “entitled” to (unspecified) privileges and immunities, it does not even attempt to demonstrate how these alleged benefits have anything to do with permissive detariffing, or how permissive detariffing would in any way permit COMSAT to engage in anticompetitive conduct. Permissive detariffing is the issue here, and the burden is on Stratos to demonstrate clearly and unambiguously the harm that it would cause; mantra-like intonations of “privileges and immunities” do not suffice.

In addition, Stratos’ attempt to bolster its case by citing COMSAT’s “argu[ment] in various Commission proceedings” that COMSAT has the exclusive right to provide space segment for U.S.-originated fixed to mobile services is utterly irrelevant to the matter at hand: permissive detariffing.<sup>11</sup> COMSAT’s provision of fixed-to-mobile traffic is almost entirely the result of carrier-to-carrier agreements with large, sophisticated carriers (such as AT&T and MCI) that deliver their mobile traffic to COMSAT’s earth stations. This type of service is almost never

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<sup>10</sup> Petition at 2.

<sup>11</sup> Of course, this is not COMSAT’s “argument.” It happens to be the unambiguous law, law that Stratos has been knowingly violating for over a year by purporting to take space segment for U.S. traffic and U.S. land earth stations from a foreign Inmarsat Signatory. As we have stated several times before, just because Stratos has pretended that this legal requirement does not exist does not nullify the unambiguous language of the Inmarsat Act, the Inmarsat Operating Agreement, and twenty years of Commission precedent. It is ironic that, despite the fact that Stratos would have the Commission believe that this requirement is nonexistent, it cites it in support of its efforts to persuade the Commission to continue imposing burdensome requirements solely on COMSAT.

provided under tariff. With regard to the MSS services that COMSAT does generally offer pursuant to tariff -- mobile-to-fixed and mobile-to-mobile traffic -- COMSAT has not asserted any statutory right of exclusivity. In fact, COMSAT must compete on the open market with a large number of other land earth station operators -- including Stratos -- for this traffic, and this market is extremely competitive. In fact, COMSAT's share of the relevant Inmarsat traffic markets is now *less than 15 percent*, with non-Inmarsat competition provided by C-band and regional GEOs such as AMSC as well. Another major MSS competitor, Iridium, will likely commence service in November of this year, further diminishing COMSAT's MSS market share. Clearly, COMSAT is in no position whatsoever to engage in "market-distorting behavior."

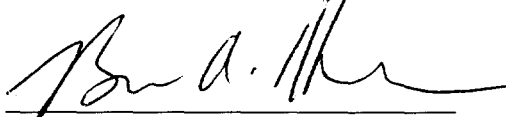
With regard to Stratos' argument that the Commission should "extend CMRS detariffing to all international MSS (except the Inmarsat services of COMSAT) where the foreign end of the call is terminated on a MET," it appears that Stratos' deregulatory philosophy calls for it -- a Canadian-owned and -operated company -- to be deregulated by the Commission as much as possible while its American competitor (COMSAT) is alone required to continue filing tariffs and adhering to all other regulation. Meanwhile, Stratos would continue to enjoy the benefits of its corporate parent's monopoly in Inmarsat traffic in Canada, a market in which U.S. MSS carriers like COMSAT are not permitted to sell their services. COMSAT does believe that across-the-board permissive detariffing of these services is warranted, but only to the extent that this flexibility applies equally to *all* providers, including COMSAT. It certainly would not benefit competition to allow foreign-based providers such as Stratos to enjoy the benefits of detariffing from their protected overseas bases while COMSAT alone is required to adhere to unnecessary, burdensome tariffing requirements.

### **Conclusion**

Stratos' petition was obviously filed for the sole purpose of using the regulatory process to hinder its competitor, COMSAT. It is factually incorrect and has no relevance to the proceeding at hand. For the reasons stated herein, it should be denied.

Respectfully submitted,

COMSAT Corporation  
COMSAT Mobile Communications



By: Bruce A. Henoch  
General Attorney  
COMSAT Corporation  
6560 Rock Spring Drive  
Bethesda, Maryland 20817  
(301) 214-3347


Its Attorney

October 16, 1998

### **Certificate of Service**

I hereby certify that a true and complete copy of the foregoing Opposition of COMSAT Corporation to Petition for Reconsideration was mailed on this date, postage prepaid, to the following:

Alfred M. Mamlet  
Maury D. Shenk  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036

  
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Bruce A. Henoch

October 16, 1998